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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,363	03/31/2004	Joel J. Kampa	BTEC 9682.1	7746
321	7590	08/05/2005	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			JASTRZAB, KRISANNE MARIE	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/814,363	Applicant(s) KAMPA ET AL.	
	Examiner Krisanne Jastrzab	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/04, 10/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: the continuing information on page 1 should be updated to reflect the current status of the parent application.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Leifheit U.S. patent No. 4,998,671 or Leifheit et al., U.S. patent No. 5,126,070 or Hamilton U.S. patent No. 6,602,466 in view of Aneas U.S. patent No. 6,189, 688 B1.

All three of Leifheit, Leifheit et al., and Hamilton, teach substantially the invention as set forth (see particularly column 5 of '671, particularly column 3, lines 20-65, column 4, lines 10-15 and 30-35 and column 5, lines 35-60 of '070 and particularly column 1, lines 40-45, column 2, lines 35-45, column 7, lines 60-68, column 8, lines 1-10, column 15, lines 45-65, column 22, lines 60-65 and column 24, lines 35-36 of '466 B2), however the references are silent as to the use of protective means to prevent premature mixing of the chemical to generate chlorine dioxide.

Aneas clearly teach structure for containing at least two substances separately until such time as mixing is required, such that they cannot react/interact prematurely. The containment means of Aneas is a flexible, tubular structure wherein flexure of the tubular means causes mixing or release of the separated components therein. The structure is surrounded by a protective sleeve means that prevents flexing or deformation of the tube prior to the desired mixing of the components therein. The sleeve can further be provided with interactive cap means that must be removed to actuate flexing of the tubular structure. See column 4, lines 48-60 and the figures.

It would have been well within the purview of one of ordinary skill in the art to provide the chlorine dioxide generating structures of any of Leifheit, Leifheit et al., or Hamilton with the protective means as taught in Aneas because it would prevent the accidental activation of the gas generating apparatus.

Claims 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Leifheit, Leifheit et al., or Hamilton as set forth above and further in view of Bethel U.S. patent No. 5,738,831

Bethel teach a structure for dispensing vapors substantially as the containment means instantly claimed wherein a base is provided containing a absorbent and having apertures therein with the gas permeable liquid impermeable means cover the base and absorbent for stabilized containment and dispensing means. See Figs. 3 and 4.

It would have been well within the purview of one of ordinary skill in the art to provide the gas generating means of any of the primary references set forth above within the vapor dispensing containment means as in Bethel because it would provide stabilized containment and uniform dispensing thereof.

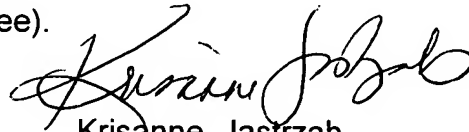
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Krisanne Jastrzab
Primary Examiner
Art Unit 1744

August 3, 2005